

IN THE MATTER OF:

and

WAYNESVILLE R-IV SCHOOL DISTRICT

The Hearing Panel, after hearing the evidence in this matter on September 20 and 21, 2000, makes the following Findings of Fact and Conclusions of Law and issues the following Decision and Order:

1. PARTIES

3. The Hearing Panel in this proceeding are:

Donna Dittrich, Hearing Panel Member

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5. Counsel for WSD is James G. Thomeczek, Jr. of the Thomeczek Law Firm, 1120 Executive Parkway, Suite 210, St. Louis, MO 63132.

6. The parties exchanged exhibits more than five business days in advance of the hearing and the parties stipulated to the admission of the exhibits into evidence.

TIME LINE INFORMATION AND PROCEDURAL HISTORY

7. The Department of Elementary and Secondary Education (“DESE”) received Parents’ request for a due process hearing on February 18, 2000. DESE determined the 45 day deadline for holding a hearing and the issuance of an opinion to be April 3, 2000. The Parents on March 29, 2000 requested an extension of the time line to May 11 and 12, 2000 for holding the hearing and May 26, 2000 for the issuance of an opinion. The Parents on May 11, 2000 requested a second extension of the time line to August 29 and 30, 2000 for holding the hearing and September 15, 2000 for the issuance of an opinion. After the abrupt resignation of Hearing Officer Trudy Fulmer,¹ Parents on August 28, 2000 requested a third extension of the time line to September 20 and 21, 2000 for holding the hearing and October 20, 2000 for the issuance of the opinion. On September 21, 2000, the Parents requested a fourth extension of the time line to October 27, 2000 for the issuance of the opinion. The panel has met this new deadline.

8. On September 12, 2000, Parents filed a Motion for Joinder of a Necessary and Indispensable Party (DESE). The Chairperson denied the Motion on September 19, 2000. On September 19, 2000, WSD filed two Motions to Dismiss which the Chairperson denied on the same date.

¹Donna Dittrich replaced Trudy Fulmer.

III. ISSUES OF THE DUE PROCESS PROCEEDING²

9. Were there procedural violations of Individuals with Disabilities Education Act (“IDEA”): (a) when the WSD did not allow therapists from Piney Ridge to stay at an IEP³ meeting and asked them to leave over objections from Parents; (b) when WSD failed to include his therapeutic needs in Student’s IEP; and (c) when WSD described Student’s educational needs in his IEP as “self-contained classroom” rather than residential placement? If there were procedural violations, did the violations cause Student to be denied free access to public education (“FAPE”) under IDEA?

10. Is WSD responsible for the costs incurred by the Parents from October 4, 1999-September 22, 2000 for a residential placement ordered by the St. Louis County Family Court at Piney Ridge, a psychiatric treatment center located within WSD, for non-educational reasons?

FACTS

11. Student was born . T.26. He is domiciled in the Rockwood School District, St. Louis County, Missouri.

12. When disruptive behavior caused problems in preschool, the parents had student, at age 4, evaluated by a psychiatrist who, while not giving a formal diagnosis, said student had a behavior problem. Petitioner’s Exhibits, p. 168-176.

13. In first and second grades, Student’s behavior problems at school increased as did

²The Hearing Panel notes that the Parents raised, prior to and at the hearing, certain issues relative to Student’s plans to take the GED. These issues, however, were not discussed in Parents’ Post-Hearing Brief; therefore, we conclude those issues have been abandoned.

³A child in need of special education is entitled to an individualized education plan (“IEP”) which provides for his or her educational development in the least restrictive environment. *See* U. S. C. Section 1401 *et. seq.*

problems at home and in public. Student was seen by a psychologist who concluded student had ADHD, at a moderate to severe level, a visual motor learning disability and that he demonstrated oppositional-defiant behavior disorder. Student began taking Ritalin for his ADHD. Petitioner's Exhibits, p. 168-176.

14. In third grade, Student was tested for the Talented and Gifted program and was accepted. His IQ was at or near 140. T. 30.

15. Student continued to have numerous and severe behavior problems at school throughout his elementary school years and he was suspended from the bus on numerous occasions. T. 33.; Petitioner's Exhibits, p. 168-176.

16. In sixth grade Student began attending Rockwood South Middle School. Student began to have problems with his school work in part due to the severity of his attention deficit disorder. His behavior problems also intensified. Petitioner's Exhibits, p. 169.

17. During sixth grade Student started taking an antidepressant in addition to medication for his ADHD. He also started seeing a psychologist on a full-time basis as well as a psychiatrist. Petitioner Exhibits, p. 169.

18. At home Student was setting fires in trash cans and on the carpet in his bedroom. T. 35.

19. In sixth grade, Student had bus suspensions, in-school suspensions, and out-of-school suspensions. T. 35-6.

20. Student did not have an IEP in 1st - 6th grades. Parents in the fall of 1997 asked for Student to be evaluated. T. 27, 36.

21. In November 1997, during Student's seventh grade year, after being accused of selling

candy to students by the school principal, the school officials attempted to search Student. Student's mother was asked to come to the school because he was very agitated and refused to be searched. The police were called to the school and Student's locker and backpack were searched. The search revealed broken locks, rubber gloves, a razor and a large knife. Student was crying and out of control. The police had to hold him down. T. 39-40.

22. Student was taken to St. John's Hospital and admitted to the psychiatric unit for approximately five days and then placed in the outpatient program. While in the hospital Student's school work was brought to him in the hospital. T. 41.

23. Student was re-admitted to the adolescent psychiatric unit at St. John's Hospital in January 1998 after his parents found him trying to slit his wrists. T. 42-43.

24. In early 1998, Student was evaluated by the Special School District of St. Louis County ("SSD") when he was in the seventh grade at Rockwood South Middle School.

25. The educational evaluation indicated that Student is a student with a behavior disorder and OHI. He also has been diagnosed with ADHD, ODD/CD, and Depression. T. 44; Petitioner's Exhibits, p. 28-38.

26. SSD developed an IEP on February 4, 1998. Petitioner's Exhibits, p. 57. The IEP did not call for Student to be placed in a residential facility.

27. Student returned to school in February 1998 at a different school, Crestview Middle School in the Rockwood School District. He attended classes for half of the day. T. 45.

28. About six weeks later, Student began attending Crestview full time and behavior problems at school began again. These problems included Student being verbally threatening, defiant, and physically aggressive. Specific behaviors consisted of conversations with peers

concerning the occult and other violent subjects. Student was suspended for ten days following an incident in the school cafeteria on April 16, 1998. T. 48.

29. Student's behavior at home also escalated and his parents frequently had to call the police. Student's behavior and anger were out of control and his parents were forced to temporarily remove Student's three sisters from the home because they feared for the girls' safety. T. 59-60.

30. In the Spring 1998, Student assaulted his father and the police came and took him to detention where he remained for four days. T. 60-1.

31. At the detention hearing the Family Court Judge requested that the Department of Mental Health (DMH) evaluate Student. DMH recommended that Student be immediately admitted to an in-patient unit at Christian Hospital Plaza for two weeks. T. 61. DMH diagnosed Student as "severely emotionally disturbed."

32. Student's doctors recommended that he be placed into a residential facility. T. 68. However, the Family Court did not agree that residential placement was necessary at that time. T. 181.

33. Student was suspended from Crestview in April 1998 after making statements about robbing a store and having a bomb.

34. Student was transferred in May 1998 to Wertz School where he participated in the Bridges Program. Despite numerous behavior and academic problems, Student finished the last month of school in the Bridges Program. T. 49-50.

35. Between Student's seventh and eighth grade years his parents and the SSD worked on finding a more effective placement for Student. The IEP team discussed several options in

October of 1998. The services that were listed in the IEP for student include special education, individual therapy, and group therapy. Student's IEP also included social skills instruction, behavior counseling and social work consultation and direction. Petitioner's Exhibits, p. 11-12.

36. SSD recommended placement at Southview, a phase II School, as the most appropriate setting for Student. That fall at Southview, Student was to get therapy as well as the benefit of smaller classes. T. 54-59.

37. After his parents voiced their concerns about the level of his studies at Southview, there was an agreement to use the Crestview Middle School challenge program curriculum brought to him. T. 54-59.

38. He was suspended from the bus and had a number of in-school suspensions. Student was finally suspended from Southview. T. 59.

39. Student began attending Logos High School ("Logos") in February 1999 on a placement by SSD. At Logos, student was taught in a small group environment with a teacher pupil ratio of 1 to 6 and he received daily therapy as well as weekly family therapy. T. 76-78.

40. Student spent a great deal of time in suspension at Logos. Student received in-house suspension seventeen times from 2/18/99 and 5/7/99 and out-of-school suspension six times during that period. T. 81; Petitioner's Exhibits, p. 150.

41. On April 15, 1999, Student was suspended from Logos after assaulting another student. T. 82.

42. He was placed in juvenile detention that day. Student remained in juvenile detention for nine weeks. T. 82.

43. In approximately July 1999, Student was placed by the Family Court at Epworth

Children's Home in the most intensive and restrictive unit. T. 85.

44. Student was at Epworth Children's Home for two months, until September 1999, when he sexually assaulted another student. T. 87.

45. He was moved to Hyland Center at St. Anthony's Hospital by the Family Court and placed in a locked psychiatric ward for twenty-four days. T. 87.

46. Student was then transferred to juvenile detention where he was placed on suicide watch. T. 88.

47. He remained in juvenile detention for less than a week. T. 88.

48. After adjudication, Student was transferred to Piney Ridge by the Family Court on October 4, 1999. T. 88. He was not placed there for educational purposes. T. 14. (Vol. II)

49. At Piney Ridge, Student was placed in a unit for sexually aggressive youth (SAY unit) where he would receive therapy and educational services. The SAY unit is a lock down unit, in which interaction with other patients is highly restricted. At Piney Ridge, Student attended individual, group and family therapy sessions. T. 89. He also gets medication. T. 145.

50. Piney Ridge, a private psychiatric treatment center, contracts with WSD for educational services. T. 247; T. 46. (Vol. II)

51. Mother requested WSD to convene an IEP meeting in the fall of 1999. A delay followed because WSD had trouble getting Student's records from other schools and because of the unavailability of counsel for Parents. Petitioner's Exhibits, p. 143.

52. On December 17, 1999, WSD convened an IEP meeting. Petitioner's Exhibits, 1-8.

53. Mother requested that the therapeutic staff be included at the IEP meeting. T. 92. Judy Gabehart, Student's primary therapist at Piney Ridge made a report at the IEP meeting and

then the therapeutic staff was dismissed from the meeting by Mr. Goforth. Petitioner's Exhibits, p. 144. Mother objected to the dismissal of the therapeutic staff. T. 92-6.

54. The resulting IEP did not include any therapeutic services, a behavior improvement plan, or services related to Student's emotion and behavioral problems. Petitioner's Exhibits, p. 1-8. However, the therapeutic program of Piney Ridge was implemented pursuant to a Master Treatment Plan, which is developed and reviewed with parental participation. T. 282-283.

55. On or about January 12, 2000, WSD sent Mother the completed IEP, which stated that student could not be successful in the regular classroom because of his behaviors. The placement decision on the IEP completed by WSD personnel states student should be placed in a "self-contained" classroom. Petitioner's Exhibits, p. 7.

56. Waynesville staff met with Piney Ridge staff on a regular basis to review the implementation of the Master Treatment Plan.

57. On December 31, 1999 Piney Ridge updated its treatment plan which included a statement that continued residential treatment was required. Petitioner's Exhibits, p.2.

58. Under the therapeutic program implemented at Piney Ridge. Student made progress, to the point that he was moved out of the SAY unit and into Unit Two, which is less restrictive. T. 291.

59. Parents were satisfied with the therapeutic aspects of the program at Piney Ridge. T. 182. Parents do not object to his education at Piney Ridge. T. 183. Parents' counsel conceded that parents were satisfied with the entire program at Piney Ridge. T. 184.

60. St. Louis County Family Court requires Parents to contribute to Student's support while he is at Piney Ridge. T. 128. Parents were required to pay \$590.00 per month, including

\$295.00 per month to Family Court and to \$295.00 per month to DMH. T. 126.

61. The overall daily rate for Piney Ridge services is \$490.00 per day. Piney Ridge receives approximately \$110.00 per day from St. Louis County Family Court and \$110.00 per day from DMH. A portion of the \$110.00 per day from DMH is reduced by the \$295.00 per month the Parents pay. T. 71-73. (Vol. II).

62. Parents pay nothing to WSD. T. 125. WSD gets certain costs reimbursed to them from Piney Ridge. T. 82. (Vol. II).

63. Student's placement at Piney Ridge ended on September 22, 2000, the day after the hearing in this matter.

CONCLUSIONS OF LAW

The Hearing Panel makes the follow Conclusions of Law:

1. Assuming there was a procedural violation of IDEA for the failure to include the Piney Ridge therapeutic staff for a longer period of time as requested by the Parents, we find that this technical deficiency did not give rise to a denial of FAPE by WSD.

2. We find that there was no procedural violation of IDEA for a failure to include Student's needs fore therapeutic services because those needs were being taken care of under the Master Treatment Plan developed and implemented by Piney Ridge, with input from WSD personnel.

3. While describing Student's educational needs for a "self-contained classroom" rather residential placement in his IEP may not have technically complied with IDEA, we find this inaccuracy did not deprive Student of educational benefits because he was in fact receiving those

benefits in a residential setting.

4. We find that WSD is not required to reimburse the Parents for the costs incurred⁴ for the residential placement ordered by the St. Louis Family Court at Piney Ridge, a psychiatric treatment center located within WSD.

5. We find that the residential placement at Piney Ridge was for non-educational reasons.

6. We find that WSD's sole responsibility to Student and his parents was to provide educational services, which were in fact provided.

DISCUSSION

Statutory and Regulatory Framework

IDEA defines FAPE as "special education and related services." 20 U. S. C. Section 1401 (18). "Special education," in turn is defined as:

. . . specially designed instruction, at no cost to parents or guardians to meet the unique needs of a child with a disability, including—(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education.

20 U. S. C. Section 1401 (16). The term "Related Services" is defined as:

. . . transportation, and such developmental, corrective, and other supportive services (including . . . psychological services, . . . counseling services. . . medical services, *except such medical services shall be for diagnostic and evaluation purposes only*) as may be required to assist a child with a disability to benefit from special education . . . (emphasis added)

20 U. S. C. Section 1401 (17). The Missouri State Plan, Section V at 27 mirrors the IDEA definition of "related services."

⁴These costs total approximately \$7000.00 based on a twelve month stay at \$590.00 per month as set out in the Findings of Fact.

According to the IDEA, the IEP team “shall . . .[include] . . .individuals who have knowledge or special expertise regarding the child, including related services personnel . . . 34 C. F. R. Section 300.344 (a)(6); 20 U. S. C. Section 1414(d)(1)(B). *See also*, Section 300.344(c) (“The determination of the knowledge or special expertise of any individual described in (a)(6) of this section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP.”)

IEP Procedural Issues

The gist of the Parents’ arguments is that WSD allowed the therapeutic staff from Piney Ridge to speak at the beginning of the IEP meeting but did not allow them to stay for the entire meeting; additionally WSD failed to provide for therapeutic services in the IEP; finally, the IEP developed for Student erroneously provided for his educational needs as being met through a “self-contained classroom” rather than “residential placement.”

We fail to see violations (or at least significant ones giving rise to the denial of FAPE). WSD initially included the Piney Ridge therapeutic staff who had input at the IEP meeting. WSD correctly decided that the recommendations offered by the Piney Ridge therapeutic staff were being included in the Master Treatment Plan for Student at Piney Ridge and there was no need to duplicate services already being provided. WSD personnel rightfully concluded that it would be inappropriate to develop a separate therapeutic program which might conflict with the work of Piney Ridge. Parents also have expressed no objection to the therapeutic aspects of the Piney Ridge program.

The dispute over the designation of Student’s educational placement as “self-contained classroom” versus “residential placement” is one of semantics. In fact, irrespective of the

description on the IEP, he was receiving residential placement at the time of the IEP meeting. This placement had been at the behest of the St. Louis Family Court, albeit for non-educational reasons. No IEP team had ever recommended residential placement. Parents expressed no concerns with the educational component at Piney Ridge. Counsel for Parents conceded that Parents were satisfied with the entire program at Piney Ridge.

Assuming *arguendo* that procedural violations occurred, the standard to be met for setting aside an IEP is as follows:

if procedural deficiencies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits.

Independent School District No. 283 v. S. D. By J. D., 88 F.3d 556, 562 (8th Cir. 1996) (citations omitted).

Even assuming technical deficiencies with Student's IEP, they do not materially affect the resolution of the main issue – whether Parents are to be reimbursed for the costs imposed by the St. Louis Family Court for the residential placement. Furthermore, the Parents had an opportunity to participate in the development of the IEP. There was no “deprivation of educational benefits” – the IEP issued on January 12, 2000 provided for the same education which he had been receiving since his arrival at Piney Ridge in October 1999.

We conclude if there were errors or mistakes in the development of the IEP by WSD, they were harmless and did not rise to the level articulated by the Eighth Circuit in the *Independent* case.

Reimbursement for Costs of Residential Placement

The St. Louis Family Court ordered the Parents to pay \$590.00 per month toward the

\$220.00 per day costs of Student's confinement at Piney Ridge. No one disputes that Student was placed there for non-educational reasons. Piney Ridge is not an educational facility but a private psychiatric treatment center.

Parents contend that Student's emotional and educational disabilities are interrelated and therefore WSD should reimburse Parents for the costs imposed by the Court. Parents cite a line of cases ordering the students' local school districts to reimburse parents for residential placement costs. They are distinguishable generally because the students were placed in educational facilities, not medical/psychiatric treatment centers. For example, the Connecticut Department of Child and Youth Services placed the student in *Mrs. B. v. Milford Board of Education*, 103 F.3d 1114 (2nd Cir. 1997) in a residential school.

We conclude that Student's situation closely parallels *Clovis United v. Office of Administrative Hearings*, 903 F. 2d 635 (9th Cir. 1990). Michelle, a child with severe emotional problems, was placed by her parents in a psychiatric hospital. *Id.* at 639. Her parents sought reimbursement for the entire costs of her residential placement from their home school district through a due process proceeding under the Education of the Handicapped Act ("EHA"), predecessor to IDEA.⁵ *Id.* The school district took the position that even if Michelle could not fully benefit from her education without the psychiatric services rendered by the hospital, the services were medical and did not fall into the EHA definition of "related services." *Id.* at 642.

The Ninth Circuit concluded that the local school district had no responsibility for the costs of Michelle's stay at the psychiatric hospital. *Id.* at 645. The child's severe emotional

⁵The "related services" language quoted earlier from IDEA is very similar to the definition of the same term under EHA.

problems rendered her unable to function educationally as well as functioning generally, resulting in her hospitalization. ⁶ *Id.*

The Court emphasized that the hospital provided little educational services. Rather, the local school district sent teachers to meet her educational needs – very similar to Student’s situation at Piney Ridge. *Id.* at 646. The Court noted that the lack of educational services buttressed the school district’s argument that the room and board were medically related for which the district was not responsible as per 34 C. F. R. Section 300.302.⁷ *Id.* This Section stated the following regarding school district’s responsibilities for residential placements:

where ‘placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program including *non-medical* care and room and board, must be at no cost to the parents.’

Id. at 647.

In holding that the school district had no responsibility other than providing educational services at the institution where Michelle had been placed, the Court said:

. . . the educational services which the school district provided Michelle at King’s View {the psychiatric hospital} are those encompassed by the Act itself which states that ‘special education’ includes specially designed instruction at home, at hospitals and at institutions. 20 U. S. C. Section 1401 (16). In enacting this provision, Congress sought to ensure that children confined to hospitals or homes for either physical or mental illnesses would not be denied an education. School districts, therefore, are required to send tutors and other trained specialists to both homes and hospitals to meet the educational needs of handicapped children. However, Section 1401 (16) does not require school districts to pay the costs of

⁶The same description seems apt to Student’s situation given his emotional state at Epworth and St. Anthony’s Hospital in the few months prior to his ordered confinement at Piney Ridge.

⁷This Section of the Code of Federal Regulations remains the same under IDEA.

a child's room and board at home and similarly does not require them to pay the room and board costs at a hospital.⁸

Id.

We conclude that WSD is not required to reimburse the costs assessed against Parents by the St. Louis Family Court for Student's confinement at Piney Ridge. These expenses were neither related services nor a residential placement within the parameters of IDEA. WSD met its sole obligation in furnishing educational services to Student from October 4, 1999-September 22, 2000.

DECISION

For reasons detailed above, the IEP developed by WSD does not violate IDEA. The Parents have no claim under IDEA for the costs assessed against them by the St. Louis Family Court for Student's residential placement at Piney Ridge from October 4, 1999-September 22, 2000.

The entire hearing panel joins in this Decision without dissent.

APPEAL PROCEDURE

These Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter. Any party aggrieved by the Decision of the Hearing Panel may, pursuant to Section 536 of the Missouri Revised Statutes, file an appeal to a state court within 30 days of the date of decision. An aggrieved party also has the option of pursuing a review of the Decision by the federal courts by filing a Petition within 30 days.

⁸Section 1401 (16) remains basically the same under IDEA.

Dated this 27th day of October, 2000.